

**IN THE CONSTITUTIONAL COURT**  
**OF SOUTH AFRICA**

CASE NO: CCT 46/95

In the matter of:

**THE NATIONAL ASSEMBLY OF THE REPUBLIC OF SOUTH AFRICA**

IN RE: DISPUTE CONCERNING THE CONSTITUTIONALITY OF THE  
NATIONAL EDUCATION POLICY BILL, NO. 83 OF 1995

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**NATIONAL PARTY PETITIONERS' HEADS OF ARGUMENT IN REPLY  
TO THE HEADS OF ARGUMENT FILED ON BEHALF OF THE  
MINISTER OF EDUCATION**

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1.

**AD PARAGRAPH 3:**

We do not advance any submissions in regard to the question whether the matter became *sub judice* when the Bill had been referred to the Constitutional Court. It is submitted that this issue is not relevant to the constitutionality of the National Education Policy Bill and relates to a purely

domestic matter which can and should be decided by the Speaker as was done in the present case.

2.

**AD PARAGRAPH 4:**

We respectfully point to the contradiction between the argument contained in the first sentence of paragraph 4.1 and that set out in paragraph 3.6.4. At the request of the Registrar of the Court and by agreement between the legal representatives of the Petitioners of the NATIONAL PARTY, the Democratic Party and the Inkatha Freedom Party, the NATIONAL PARTY petitioners attempted to provide the Court with as complete a "record" as possible. We also refer to the concession by the Minister in paragraph 2.2 on page 404 of the paginated papers.

3.

**AD THE MERITS:**

It is submitted that the Heads of Argument on behalf of the Minister of Education display an ambivalence with regard to the true import of the Bill.

## 4.

On the one hand it is stated that:

- 4.1 Ultimate decisions relating to educational policy issues vest in Parliament and not the Minister **(paragraph 1.3.2)**.
- 4.2 The Bill envisages special procedures for legislation embodying educational policy **(paragraph 1.3.3)**.
- 4.3 Enforcement of educational policy on unwilling provinces is not dictated by the Bill **(paragraph 5.18)**.
- 4.4 The Minister has no power to impose his will where the monitoring and evaluation function reveals that the standards of education provision, delivery and performance in a province do not comply with the policy determined in terms of Section 3(3) **(paragraph 5.18)**.
- 4.5 Any enforcement of National Education Policy cannot be achieved by the Minister simply through the provisions of the Bill **(paragraph 6.13.1)**; and

5. The Bill patently does not oblige the provinces to take legislative or executive action **(paragraph 6.13.5)**.

6.

On the other hand, it is conceded on behalf of the Minister that the Bill makes provision for the monitoring and evaluation of the implementation of proposed policy. "Absit such a provision, the making of policy would be relegated to an academic exercise of little practical value." **(paragraph 5.15)**. It is also repeatedly submitted that it is not inevitable that the Minister will seek to impose any particular policy over the provinces **(paragraph 1.3.4; paragraph 5.18; paragraph 6.18)**.

7.

Whilst it is argued that enforcement of educational policy on unwilling provinces is not dictated by the Bill significantly, it is not contended on behalf of the Minister that enforcement of educational policy on unwilling provinces is not authorised by the Bill. The submission that it is not inevitable that the Minister will seek to impose any particular policy over the provinces implies that the Bill authorises the Minister to foist educational policy on unwilling provinces if the Minister so wishes.

8.

If the Minister persists in the arguments referred to in paragraph 4 above to the exclusion of the submissions referred to in paragraph 5 above, the NATIONAL PARTY PETITIONERS' constitutional objections to the Bill would fall away and we would move for the declaratory order contained in the Draft Order which has been annexed to the NATIONAL PARTY PETITIONERS' Heads of Argument.

9.

**AD PARAGRAPH 7:**


The question is, if there is no need for such a Bill to empower the Minister to make national education policies, why is it sought to enact it? The answer suggested on behalf of the Minister, namely that it serves to impose important constraints on the capacity, is with respect facile. The Constitution imposes the constraints and the danger inherent in enacting parallel constraining legislation is trenchantly illustrated in the very dispute before the Court.

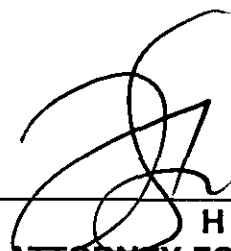
10.

If, however, the Minister persists with the submissions referred to in paragraph 5 above, we contend that those very submissions support the NATIONAL PARTY PETITIONERS' case that the Bill purports to authorise unconstitutional intervention by the Minister in the executive and legislative functions of the provinces and should be declared unconstitutional.

SIGNED AT PRETORIA ON THIS 12<sup>th</sup> DAY OF FEBRUARY 1996.

  
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P P PUCKRIN S.C.

  
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